IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 649 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes. : YES

2. To be referred to the Reporter or not? Yes. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 oJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ : NO

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1. The petitioners have filed this application under Sec.397 read with Sec.401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as `Code') against the judgment and order passed by the learned Special Judge, Ahmedabad City, dated 27th September, 1999, below Exh.9 in special Case No. 13 of 1997, whereby the learned Special Judge was pleased to reject the application filed by Ramanbhai Becharbhai Patel and Satish Balkrishna Karoda - original accused - petitioners herein for discharge under Sec.227 of the Code.

2. The facts giving rise to this application are as under:

2.1 The petitioners have been chargesheeted vide chargesheet No.1/97 in pursuance to complaint filed by one Ishwarbhai Dolatram Vanidhani on 8.10.93 vide C.R.No. RC 36(A)/93. The said case was filed against one Shri S.S.Saini and Shri Ashokkumar Tyagi for the alleged illegal demand of gratification by them from the complainant. The petitioners have also been joined as accused No.3 and 4 for hatching conspiracy in such illegal act. It has been stated that, as a matter of fact, a complaint came to be filed by the said complainant under Sec.3 of the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred to as `the Act') filed by Shri Ashokkumar Tyagi (accused No.2 in present case). In pursuance to the said complaint, the present complainant Ishwarbhai has been arrested on 5.2.1993 and was produced on 6.2.1993 before the learned Judicial Magistrate, First Class, Railway Viramgam at Ahmedabad. It has been further stated that the present complaint is nothing but a counterblast of the complaint filed against Ishwarbhai. It has been further stated that the petitioner No.1 had issued a certificate confirming that the land in question where the trees are cut by Ishwarbhai was belonging to the Railway and the petitioner No.1 had reason to do so and, therefore, it cannot be said that either petitioner No.1 or petitioner No.2 were in any way the parties to the so-called conspiracy of accused No.1 and 2.

2.2 The petitioners thereafter realise that as there is no case against them, they had filed an application Exh.9 in Special Case No.13/97 for discharge under Sec.227 of the Code. The learned Special Judge after considering the materials produced came to the conclusion that application of the petitioners cannot be accepted and pleased to dismiss the said application by his order dated 27.9.1999.

2.3 Being aggrieved and dissatisfied with the said order of the learned Special Judge, the present petitioners have preferred this Criminal Revision Application.

3. Shri Y.S.Lakhani, learned advocate for the petitioners has also produced further affidavit of Shri Satishbhai Balkrishna Karoda - petitioner No.2 herein and submitted that as regards main accused Ishwarbhai Daulatram a Criminal Complaint was lodged before the learned Magistrate, Railway, Viramgam, and the learned Magistrate by his judgment and order dated 1.7.2000 pleased to convict the accused and believed that the case was made out against said Ishwarbhai. He, therefore, submitted that the main accused has already been convicted in this behalf. He further submitted that in chargesheet as regards accused No.2 is concerned only allegation that on 3rd February, 1993, Mr.S.S.Saini, Mr.A.K.Tyagi, Mr.R.B.Patel and Mr.S.B.Karode visited the site of Plot No.302, Near Gota Railway Crossing, Gota, Ahmedabad, and inquired about cutting of babool trees. This is the only allegation against petitioner No.2. There is no statement or material against the petitioner No.2 as far as rejection of discharge application against petitioner no.2 is concerned. The order of the learned Special Judge is clearly illegal and liable to be quashed and set aside. As regards accused No.1 is concerned, the learned counsel has submitted a copy of chargesheet. He submitted that main allegation under the provisions of Prevention of Corruption Act was against Mr.Saini, Mr.Tyagi and Mr.Jadeja and out of that Mr.Jadeja has already been discharged. He further submitted that there is no whisper about the allegation under the provisions of Prevention of Corruption Act against accused No.1 in this behalf. He further submitted that the only allegation against petitioner No.1 is that he has issued a certificate to the effect that cut pieces of wood seized from the possession of the complainant railway properties and it was also found that on 3.2.1993 plot No.302 measured by Surveyor and no encroachment of railway land was noticed. He further submitted that the learned Special Judge has misread and misinterpreted the papers of chargesheet. The learned Judge has failed to see that the present complaint against the petitioners is nothing but a counterblast to the complaint filed by Ashokkumar Tyagi. He submitted that in view of the statements before the Court and the materials produced, the present petitioners ought to be discharged by the learned Special Judge.

3.1 Mr.Lakhani, learned counsel for the petitioners

has also relied upon the judgment of Hon'ble Supreme Court in the case of K.Ramakrishna and others Vs. State of Bihar and Another reported in 2000(8) SCC 547. In Para 4 on page 549 the Hon'ble Apex Court has observed as under:

> "The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped and quashed. As observed by this Court in Rajesh Bajaj Vs. State NCT of Delhi the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage."

3.2 He, therefore, submitted that the present application be allowed and the order passed by the learned Special Judge be quashed and set aside.

4. Shri Amit J.Shah, learned Counsel for the respondent No.2- CBI has submitted that in this case the learned Special Judge has exercised his discretion which is vested in him on the materials produced before him and, therefore, this Court under revisional jurisdiction should not interfere with the said order of the learned Special Judge. He has also stated that the main charge against the petitioners was a charge of conspiracy which was hatched for demanding and accepting an illegal gratification from the complainant and records were fabricated by the accused being a public servants to cause harm to the complainant. He has also relied upon the papers of the chargesheet. He submitted that it was revealed that the trees cut down by the complainant Shri Ishwarbhai Daulatram Vanidhani, were planted by the Forest Department and the ownership over the trees vested with the Forest Department. Shri R.B.Patel, in furtherance of the criminal conspiracy, issued a Railway Property Certificate baselessly to the effect that cut pieces of wood seized from the possession of the

complainant were the railway properties. He, therefore, submitted that the order of the learned Special Judge rejecting discharge application is perfectly in accordance with law.

4.1 Mr.Shah, learned Counsel for the CBI has also submitted that under Sec.227 of the Code only if the Judge after going through the documents and after hearing the prosecution and accused comes to a conclusion that no sufficient grounds exist to prosecute the accused then he shall discharge the accused. He submitted that in this case there are sufficient materials and grounds exist and therefore the learned Special Judge has rightly rejected the said application for discharge of the accused. He submitted that there was a clear case of conspiracy and therefore the order of the learned Special Judge is legal and valid.

4.2 He has relied upon the judgment of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Som Nath Thapa reported in AIR 1996 S.C. 1744. In para 31 and 32 the Apex Court has observed as under:

"Let us note the meaning of the word "presume". In Black's Law Dictionary, it has been defined to mean "to believe or accept upon probable evidence." (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming". Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (Emphasis supplied). In Law Lexicon by P.Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition."

"The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought

on record by the prosecution has to be accepted as true at that stage."

4.3 The learned counsel for the CBI has also relied upon the judgment of the Hon'ble Apex Court in the case of Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and another reported in 1989 SCC (Cri.) 285. In para 14 the Hon'ble Supreme Court has observed as under:

"In fact, Sec.227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused." The `ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

In para 20 the Hon'ble Court has further observed as under:

"If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed."

4.4 Similarly learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of State of M.P. Vs. S.B.Johari and others reported in 2000 S.C.C. (Cri.) 311. In para 6 the Hon'ble Supreme

Court has observed as under:

> "In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under Section 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead necessary evidence at the time of trial to establish its case that purchase of medicines for the Cancer Hospital at Indore was at a much higher price than the prevailing market rate. Further again non-joining of the two remaining members of the Purchase Committee cannot be a ground for quashing the charge. After framing the charge and recording the evidence, if the Court finds that other members of the Purchase Committee were also involved, it is open to the Court to exercise its power under Sec.319 of the Cr.P.C. Not only that, the Court errorneously considered the alleged statement of the manufacturing company that quotations given by M/s. Allied Medicine Agency, Indore were genuine without there being any cross-examination. The High Court ignored the allegation that many of the items have not been purchased and the amount is paid on bogus vouchers. Hence, there was no justifiable reason for the High Court to quash the charge framed by the trial court."

5. Shri A.J.Desai, learned APP for the respondent No.1-State has also tried to support the case of Mr.Shah in this behalf.

6. I have gone through the submissions of Mr.Y.S.Lakhani, learned advocate for the petitioner, Shri A.J.Desai, learned APP for the State and Shri Amit Shah, learned counsel for the CBI. I have also gone through the reasonings of the learned Special Judge in this behalf. In my view, looking to the case regarding Prevention of Corruption Act, looking to the wide definition of "conspiracy" and the judgments which have

been relied upon by the learned APP as well as learned counsel for the CBI, I am of the view that the accused cannot be discharge at this stage. I am of the view that it is not necessary that all the details of the offence must be stated in the charge-sheet or all the charges should be proved against the accused at this stage. In my view the ground in this context is not a ground for conviction but the ground for putting the accused on trial, the accused cannot be discharged without considering the police report and documents under Sec.173, hearing parties and affording to prosecution opportunity being heard. As stated above, in the above decision, it is not the function of the Court to way pros and cons of the prosecution's case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect on non-compliance. In my view, there is sufficient prima facie materials in this case to proceed with the trial and to prosecute the accused and, therefore, this Criminal Revision Application is required to be rejected and accordingly the same is rejected. Rule is discharged. Interim relief if any granted earlier shall stand vacated. The Special Judge, Ahmedabad City, will proceed further in Special Case No.13 of 1997 against petitioners also in accordance with law, as expeditiously as possible.

(K.M. Mehta, J.)

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